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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re the Marriage of LORENA E. VALLE and
ALEX HERNANDEZ.

C081116

LORENA E. VALLE,

Respondent,

(Super. Ct. No. 10FL07290)

v.

ALEX HERNANDEZ,

Appellant.

In 2011, Lorena E. Valle and Alex Hernandez entered into a written marital settlement agreement that was incorporated into a dissolution judgment. As part of the settlement agreement, the parties executed a promissory note whereby Hernandez agreed to pay Valle \$25,000 in three installments in exchange for the family residence. The promissory note provided for a late payment penalty charge of \$500 per month until the

“account” was brought current. After Hernandez failed to pay Valle the amount owed under the terms of the promissory note, including the amount owed for late payment penalty charges, Valle moved to enforce the terms of the settlement agreement in February 2015. In October 2015, the trial court granted Valle’s motion to enforce the settlement agreement, ordering Hernandez to pay Valle \$400 per month for a period of 75 months, i.e., \$30,000. In December 2015, the trial court denied Hernandez’s motion for reconsideration of that order, finding that the \$500 late payment penalty is not “usurious or unconstitutional.” Hernandez, proceeding pro se, appeals from this order.

On appeal, Hernandez contends the trial court erred because the late payment penalty is unlawful under Civil Code section 1671 and/or Civil Code section 3302. We affirm the judgment.

DISCUSSION

“Appealed judgments and orders are presumed correct, and error must be affirmatively shown.” (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 (*Hernandez*).) Consequently, the appellant has the burden of providing an adequate record to assess error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*); *Hernandez, supra*, 78 Cal.App.4th at p. 502; *Jade Fashion & Co. Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 644.) Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. (*Maria P., supra*, 43 Cal.3d at pp. 1295-1296; *Hernandez, supra*, at p. 502.)

Here, the record provided by Hernandez consists only of a 15-page clerk’s transcript. The only documents in the record that are relevant to this appeal are two minute orders and a form order entitled “Findings and Order after Hearing.” The written order denying Hernandez’s motion for reconsideration states, without explanation, that the \$500 late payment penalty in the promissory note is not “usurious or unconstitutional.” The record does not contain a reporter’s transcript of the relevant

proceedings below. Nor does the record contain the marital settlement agreement or any other documents filed by the parties in the trial court. Under these circumstances, we conclude that Hernandez has failed to provide an adequate record to assess the claimed error, and therefore we affirm on that basis. (*Maria P.*, *supra*, 43 Cal.3d at pp. 1295-1296; *Hernandez*, *supra*, 78 Cal.App.4th at p. 502; *Jade Fashion & Co. Inc. v. Harkham Industries, Inc.*, *supra*, 229 Cal.App.4th at p. 644.)

In any event, our review of the limited record discloses that Hernandez has forfeited his claim of error. According to Hernandez, the settlement agreement awarded him the family residence in exchange for paying Valle \$25,000. The sum of \$25,000 was to be paid in three installments, the second of which was to be made within 30 days after Valle recorded a quitclaim deed. Hernandez claims that he paid the second installment in two payments, the second payment occurring in January 2012. Although not entirely clear, it appears that Valle released her interest in the family residence by recording a quitclaim deed, and has not resided at the residence since February 2010. The record reflects that Hernandez has lived at the family residence since the dissolution judgment. Accordingly, having accepted the benefits of the judgment, Hernandez cannot attack the portion of the judgment obligating him to pay a \$500 per month late penalty charge. “ ‘Ordinarily, a party cannot accept the benefits of a judgment, in whole or in part, and then attack it by appeal. His conduct in taking any of its advantages while seeking to reverse it is inconsistent, and the result is a waiver of the right.’ [Citations.]” (*In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174, 1179-1180.)

DISPOSITION

The judgment is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MAURO _____, J.